



## THE UK COVID-19 INQUIRY

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### TRADES UNION CONGRESS: SUBMISSIONS IN ADVANCE OF THE PRELIMINARY HEARING IN MODULE 2A

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#### Introduction

1. These submissions are made by the Trades Union Congress (“TUC”) in advance of the first preliminary hearing in module 2A, which will take place on 1<sup>st</sup> November 2022. Module 2A is primarily concerned with the Scottish Government’s core political and administrative decision-making in relation to the Covid-19 pandemic between early January 2020 and April 2022.
2. The TUC seeks to assist the Inquiry with its experience and expertise. The TUC brings together 5.5 million working people who make up its 48 member unions, from all parts of the UK. Each of the 48 member unions is listed in Annex 1 and, as the list makes clear, they span a wide range of industries profoundly affected by the Covid-19 pandemic, including many front-line roles.
3. The TUC is also working in partnership with the Scottish Trades Union Congress (“STUC”) representing affiliated membership in Scotland. The STUC represents over 540,000 workers across 39 affiliated Trade Unions and 20 Trades Union Councils. They are listed in Annex 2. As Roz Foyer, the STUC General Secretary, puts it, the STUC *“speak[s] for trade union members in and out of work, in the community and in the workplace, in all occupational sectors and across Scotland. Our representative structures ensure that we can speak with authority for the interests of women workers, black workers, young workers, lesbian, gay, bisexual, and transgender workers and other groups of trade unionists that otherwise suffer discrimination in the workplace and in society.”*<sup>1</sup>

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<sup>1</sup> ‘About the STUC,’ <https://stuc.org.uk/about-the-stuc>.

4. Tens of thousands of people of working age died in the pandemic, many of whom were key workers in high-risk workplaces in sectors such as health, social care, transport, food processing and textiles, a great many of whom were TUC members and, in Scotland, STUC members. Workers from ethnic minorities were particularly hard hit, with BME men 57% more likely to be working in jobs with a higher mortality rate, and BME women 48% more likely. As the TUC General Secretary, Frances O’Grady, put it in a joint statement released with the Covid Bereaved Families for Justice on Workers’ Memorial Day earlier this year, before the Inquiry’s Terms of Reference (“**ToR**”) were finalised,

*“We’ll forever be in the debt of the workers who kept the country going during the pandemic - nurses, carers, bus drivers, factory workers and so many more.*

*Far too many were exposed to the virus at work - and lost their lives as a consequence. Now the government owes it to them, and to their families, to make sure the public inquiry investigates what should have been done to keep everyone safe at work.”<sup>2</sup>*

5. As the TUC submitted in respect of module 1, the baton has now passed to the Inquiry, and the Inquiry owes it to those who were exposed to the virus at work, and lost their lives as a consequence, and to all those who suffered hardship in other ways - including loss of livelihoods, long-term work-related injury, loss of colleagues to the virus - to investigate what should have been done to keep everyone safe at work. Module 2A is a critical part of this.
6. As the TUC is also a core participant in module 1, written and oral submissions were made in advance of and at the first preliminary hearing on 4<sup>th</sup> October 2022 which relate to a number of items on the agenda for this module 2A hearing, including the commencement of the Inquiry, the approach to disclosure generally and the use of disclosure schedules, the early disclosure of rule 9 requests and instructions to experts, the importance of timescales and deadlines which allow core participants sufficient time to meaningfully engage, and the importance of sitting not only in the devolved jurisdictions but also outside of London. Some of those issues were

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<sup>2</sup> ‘On Workers’ Memorial Day, Unions and Bereaved Families Demand Covid Inquiry Seeks the Truth About Worker Deaths,’ 28th April 2022, <https://www.tuc.org.uk/news/workers-memorial-day-unions-and-bereaved-families-demand-covid-inquiry-seeks-truth-about>.

subsequently addressed in the Chair's ruling of 17<sup>th</sup> October 2022. The submissions are not repeated here.

7. These submissions do address, briefly, the issues of (a) the scope of Module 2A, and (b) the Rule 9 requests for this module.

### Scope

8. The TUC is, in broad terms, content with the current phrasing of the provisional outline of scope for Module 2A. It is broadly phrased and we consider that the wording permits the key issues arising in respect of Scotland to be considered; and key issues which are likely to be of relevance when comparing and contrasting the approach adopted by the Scottish Government and by the devolved Governments in Northern Ireland and Wales, and by the Government in respect of England. We make below a number of general submissions regarding scope; and some specific submissions in respect of module 2B.
9. First, the Inquiry is urged, at the earliest possible stage, to provide further information as to the scope of further modules.
10. At present, the Inquiry has given broad indications of the scope of modules 1, 2, 2A-C, and 3. The Inquiry has also indicated that there will be a number of further modules addressing 'system' and 'impact' issues across the UK. It is apparent that there could be very significant overlap between the issues to be considered in module 2A and those subsequent modules. For example, consideration in module 2A of the reasonableness and timeliness of non-pharmaceutical interventions ("NPIs"), and public health communications, may have very significant relevance to, and be informed by, the evidence in subsequent modules on topics such as "*the care sector*", "*the education and business sectors*", "*children and young persons*" and "*public services and on other public sectors.*"
11. Some important considerations arise. For example, it may be that module 2A does need to hear some evidence on those topics earmarked for subsequent modules as they are highly relevant to the issues being considered in module 2A. Alternatively, it

may be that areas of investigation that *could* fall within module 2A, are to be investigated in the later modules.

12. Those are matters on which core participants should have opportunity to address the Inquiry at an early stage. However, it is very difficult to do so in a meaningful way, without any indication as to subsequent modules beyond the broadest of headings.
13. It is recognised that the Inquiry is working at an immense pace, and its own thinking as to the division of topics between modules will be developing and will continue to do so. It will inevitably be an iterative process. However, it is far better for the Inquiry to reveal its current plans for subsequent modules so as to put core participants in an informed position. Core participants should, for the benefit of the Inquiry, be more than passive recipients of updates given by the Inquiry team. We seek to be of assistance and to engage in a meaningful way as early as possible, particularly given the time pressures which the Inquiry is operating under and the intended timeline, to hold hearings in respect of this module in Autumn 2023.
14. Second, the TUC indicates that its own focus for the purposes of module 2 will be issue 2 (as it relates to guidance and advice to health and social care providers), issue 3 (NPIs) and issue 5 (public health communications).
15. The TUC makes the following specific submissions as to the scope of this module:
  - (a) The education sector is of significant relevance to the examination of decision making around NPIs. That is both because education was significantly affected by NPIs, but also because education settings could be vectors for community transmission. The relationship between school attendance, for example, and community transmission, is an important one. Thus, when the Inquiry examines *“the development of the approach to NPIs in light of the understanding of their impact on transmission, infection and death”* must inevitably include consideration of educational settings. Some clarity is needed as to how this issue will be examined across module 2A, and as yet undefined further modules.
  - (b) The use and effectiveness (or otherwise) of NPIs played out in significant part in workplaces across the UK. Community transmission and significant loss of life

occurred in sectors such as the transport sector, the communications sector, the manufacturing sector (in particular, it appears, the food processing and textiles industry), the construction sector and the retail sector. In examining *“the development of the approach to NPIs in light of the understanding of their impact on transmission”*, it will be important to understand the effectiveness of NPIs in these sectors and how NPIs were being applied in practice.

- (c) In relation to public health communications, one significant feature of the use of NPIs was the lack of clear communications and guidance for workplaces. The Inquiry will need to consider what guidance was given in respect of NPIs in workplaces.
  - (d) Both in submissions on the terms of reference, and for module 1, the TUC has emphasised the importance of the Inquiry examining the mechanisms in place for ensuring safety in workplaces and how, in practice, NPIs were implemented and enforced. That requires an examination of the role of the Health and Safety Executive (HSE), other regulators such as the ORR, and also local authorities. Presently, the TUC is unclear as to in which module these issues are going to be examined.
16. Further, as we made clear in our application seeking core participant status for this module, the STUC met with the Scottish Government regularly throughout the pandemic. This included planning meetings twice per week between the Scottish Government and the STUC, as well as lobbying efforts (around lockdown and PPE in particular). This is a notably greater level of engagement than the TUC had with the UK Government.
17. As such, the STUC had a significant influence in shaping Scottish Government policy and response – for example, in the designation of key workers and steps taken to ensure guidance was followed. These represent areas of divergence from the approach taken by the UK Government.
18. When considering scope in respect of module 2A, and the focus of the public hearings, it will, we submit, be helpful to have in mind the potential comparisons

and contrasts with modules 2, 2B and 2C; and to understand the differences in approach between the governments.

### **Rule 9 requests**

19. The TUC is grateful for the update as to the recipients thus far of Rule 9 requests for the purposes of module 2A.
20. The Inquiry is invited to direct a Rule 9 request to the Scottish TUC who will be able to give relevant and important evidence on the use and effectiveness of NPIs in workplaces in Scotland, and related public health communications. As we indicate above at paragraphs 16 and 17 in particular, the STUC has relevant evidence to give as part of this module to the Inquiry.
21. Rule 9 requests should also be made of those professional bodies that played a significant role in cascading and adapting national public health communications into workplaces. That should include the organisations described above such as the CLC, the RICE, the HSE and the ORR. The issue of to whom Rule 9s are addressed is being given urgent consideration and the TUC envisages writing to the Inquiry as a matter of urgency with a list, with explanatory detail, of those professional and regulatory bodies to whom a Rule 9 request should be addressed.

### **Closing submissions**

22. Whilst it is important to have distinct modules for the UK (and England), Wales, Scotland and Ireland, it will also be useful to have some opportunity to take a broader view of the evidence gathered in and heard in each of the modules, and to take a coherent view of the findings and lessons learned across the modules. The Inquiry is invited to set aside a short hearing in 2024 for the purpose of hearing submissions reflecting on the four modules. We suggest a two day hearing would be sensible and appropriate for this purpose.



**CAOILFHIONN GALLAGHER KC**

**SAM JACOBS**

Doughty Street Chambers

27<sup>th</sup> October 2022

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### ANNEX 1

#### THE TUC UNIONS

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- Accord – Lloyds Banking Group, TSB and other financial services
- Advance - Santander and Santander businesses in the UK
- Aegis - Finance sector staff at Aegon UK, Atos UK, Skipton Building Society, Yorkshire Building Society
- AEP – Educational psychologists and assistant educational psychologists in public and private sector
- AFA-CWA – Mobile civil aviation workers (flight attendants/cabin crew)
- Artists’ Union England – Freelance visual artists, applied arts, sound and performance
- ASLEF – Railways – drivers, operational supervisors and staff
- BALPA – Airline pilots; commercial helicopter pilots; and technical rear crew
- BDA – Dieticians in the public and private sector
- BFAWU – Workers in food industries
- BOSTU – Orthoptists
- Community – General union covering a range of sectors including steel and other metals, third sector and logistics
- CSP – Chartered physiotherapists, physiotherapy students and support workers





- CWU – BT, O2, Post Office, Royal Mail Group and other telecoms companies
- EIS – Teachers, lecturers, associated educational personnel in Scotland
- Equity – Professional performers and creative practitioners
- FBU – Fire and rescue services
- FDA – Senior staff in civil service, public bodies and NHS
- GMB – General union covering a range of sectors, including social care, manufacturing, energy and public services
- HCSA – The hospital doctors’ union
- MU – Musicians including live and recording artists, composers, teachers and writers
- NAHT – Head teachers, deputies, assistant head teachers and school leaders across sectors
- NAPO – Probation and family court staff
- NARS – Racing staff employed by licensed racehorse trainers
- NASUWT – Teachers and head teachers in all sectors from early years to FE across the UK
- Nautilus International – Merchant navy and all related areas
- NEU – Teachers, headteachers, lecturers and support staff in all education sectors
- NGSU – All staff at the Nationwide Building Society
- NHBCA – All staff at the National House Building Council
- NSEAD – Art, craft and design educators across all phases and sectors
- NUJ – Journalists, copywriters, designers, presenters, producers and website content providers



- NUM - Coal mining and associated undertakings
- PCS - Government departments and agencies, public bodies, private sector IT and other services
- PFA - Professional football
- POA - Staff in penal or secure establishments or special hospitals
- Prospect - General union covering a range of sectors, including creative industries, defence, scientific and professional staff and energy
- RCM - Practising midwives and maternity support workers in the UK
- RCP - NHS, independent practice and private chiropodists and podiatrists
- RMT - Railways, underground, metro, bus, road transport, taxi, maritime and offshore
- SoR - Radiographers and related staff in NHS
- TSSA - Administrative, clerical, professional and technical employees of railways, buses, London Underground, travel trade
- UCAC - Teachers, headteachers, education advisors and lecturers across all sectors in Wales
- UCU - Academic and related staff in HE, FE, land-based, adult and prison education.
- UNISON - General union covering a range of sectors, including local government, health and social care, utilities, energy, education and voluntary sector
- UNITE - General union covering a range of sectors, including manufacturing, aerospace, aviation, transport, voluntary and public services
- URTU - Drivers, ancillary and warehousing workers in the logistics and food sectors
- USDAW - Call centres, catering, distribution, food processing and manufacturing, retail and warehouses



- WGGB - Writers working in TV, radio, film, books, theatre, comedy, video games and multimedia

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### ANNEX 2

### STUC AFFILIATED UNIONS AND TRADE COUNCILS

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#### Affiliated Unions

ACCORD : Areas covered: All staff within HBOS plc, including the retail network, Intelligent Finance, HBOS Card Services, Halifax Direct, Clerical Medical, Halifax Estate Agents, HBOS Life and Pensions.

Aegis : Areas covered: Staff within the finance sector, including Aegon UK, Atos, Computershare Loan Services, Yorkshire Building Society, Skipton Building Society.

Associated Society of Locomotive Engineers and Firemen (ASLEF) : Areas covered: railways (drivers, operational supervisors and staff)

Association of Educational Psychologists Areas covered: Educational Psychologists in the United Kingdom

Bakers, Food and Allied Workers Union(BFAWU) Areas covered: throughout the food sector from production to retail.

British Air Line Pilots Association (BALPA) Areas covered: pilots, winchmen and flight engineers

British Dietetic Association (BDA) : Areas covered: the science of dietetics in the private and public sector

British & Irish Orthoptic Society (BOS) : Areas covered: orthoptists

Chartered Society of Physiotherapy [CSP] : Areas covered: physiotherapy and health service



Communication Workers Union [CWU] : Areas covered: posts and telecommunications in Post Office, British Telecom, Cable and Wireless, Cable TV, National Girobank and related industries

COMMUNITY : Community was formed in 2004 following the merger of the Iron and Steel Trades Confederation (ISTC) and the National Union of Knitwear, Footwear & Apparel Trades (KFAT)

Educational Institute of Scotland [EIS] : Areas covered: teachers, lecturers, associated educational personnel (Scotland)

EQUITY : Areas covered: performance workers in theatre, film television, radio and variety

FDA : Areas covered: civil service, public bodies and NHS

Fire Brigades Union [FBU] : Areas covered: local authority fire brigades

GMB : Areas covered: civil air transport, security, AA, aerospace, defence, clothing, textiles, food production and distribution, retail, hotel, catering, chemicals and process, construction, building supplies, furniture and timber, local government, NHS, care, education, engineering, offshore, shipbuilding, energy, utilities

Hospital Consultants and Specialists Association : Areas covered: hospital consultants, associate specialists, specialist registrars (within 2 years of CCT) and staff grades.

Musicians' Union [MU] : Areas covered: performers engaged in the music profession including music writers and instrumental music teachers

National Association of Racing Staff [NAORS] : Racecourse staff

National Association of Schoolmasters Union of Women Teachers [NASUWT] : Areas covered: education



National Union of Journalists [NUJ] : Areas covered: journalism (Glasgow Branch and Dundee Branch)

National Union of Mineworkers : Areas covered: Mining

National Union of Rail, Maritime and Transport Workers [RMT] : Areas covered: railways and shipping, underground, road transport

Nautilus International : Areas covered: Maritime professionals at sea and ashore.

Prison Officers Association [Scotland] : Areas covered: persons employed in any penal or secure establishment or special hospital as a prison officer, a nursing grade, a non-industrial stores grade and special hospitals staff

Prospect : Areas covered: engineering, scientific, managerial, telecommunications, information technology and related industries, film and stage production

Public and Commercial Services Union [PCS] : Areas covered: government departments and agencies, public bodies, private sector information technology and other service companies

The Royal College of Midwives Area covered: midwifery

Scottish Secondary Teachers' Association Area covered: education

Scottish Artists Union Area covered: artists

Scottish Society of Playwrights : The Scottish Society of Playwrights represent the interests of playwrights in Scotland and Scottish playwrights abroad

College of Podiatrists

Society of Radiographers [SoR] : Areas covered: National Health Service



[Transport Salaried Staffs' Association \[TSSA\]](#) : Areas covered: administrative, clerical, supervisory, managerial, professional and technical employees of railways, London Underground, buses, road haulage, port authorities and waterways in Great Britain and Ireland. Also employees in the travel trade, hotel and catering industries

[Union of Shop, Distributive and Allied Workers \[USDAW\]](#) : Areas covered: retail, distributive, food processing and manufacturing, laundries, catering, chemical processing, pharmaceutical, football pools, home shopping, warehouses, insurance agents, clerical, milkround and dairy process, call centres

[UNISON Scotland](#) : Areas covered: local government, health care, the water, gas and electricity industries, further and higher education, schools, transport, voluntary sector, housing associations, police support staff

[Unite the Union](#) : Areas covered: manufacturing, engineering, energy, construction, IT, defence aerospace, motor industry, civil aviation, chemicals and pharmaceuticals, steel and metals, shipbuilding, scientists, technologists, professional and managerial staff, electronics and telecommunications, tobacco, food and drink, textiles, ceramics, paper, professional staff in universities, commercial sales, the voluntary sector, financial services, and the National Health Service

[United Road Transport Union \(URTU\)](#) Areas covered: HGV, LGV, lorry, truck drivers and warehouse staff

[University & Colleges Union \[Scotland\]](#) : Areas covered: academic and related staff in higher education

### **Scottish Trades Union Councils**

Aberdeen

Clydebank

Cumbernauld and Kilsyth District

Dumfries and District



Dundee

Edinburgh

Falkirk

Fife

Glasgow

Greenock and District

Inverness and District

Irvine and North Ayrshire

Kilmarnock and Loudoun

Midlothian

Moray

North Lanarkshire

Paisley and District

South Lanarkshire and East Kilbride

Thurso and Wick

West Lothian